IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 41 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINCHADRA M DAVE & 8 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR VH DESAI for Petitioner(s) : 1 - 9.
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/12/2005

ORAL JUDGMENT

1.The petitioners have filed this petition under Article 226 of the Constitution of India praying for direction to the respondents to grant selection grade to the petitioners as if effective and

applicable from 1.7.79 with all other allied benefits and also praying for quashing and setting aside the seniority list of work charged dated 15.10.84 sent to the sub divisions by the respondent.

2. The petitioner was admitted and rule was issued on 12.4.88. While issuing the rule, this court has passed the order refusing the interim relief in the facts and circumstances of the case. The Court further observed that grant of interim relief will amount to allowing the petition at this stage. At this stage without adjudicating the issue involved in the matter. Such interim relief is not called for in the facts and circumstances of the case. The court has also directed the respondent to file affidavit in reply latest by July 31, 1985. Thereafter it would be open to the petitioner to request this Court to fix date of hearing.

3. It appears that neither the respondent has filed affidavit nor petitioners have requested the Court for fixing the early date of hearing. The

affidavit is filed on behalf of respondents only on 19.12.05. The petition was originally filed by Shri A.K Shah learned advocate on behalf of the petitioners and subsequently, the name of Mr. V.H Desai is shown as advocate appearing on behalf of the petitioners. The petition is of 1987. More than 18 years have passed. In view of the affidavit in reply filed by the respondents, prayers made in the present petition could not be granted. It is stated in the affidavit in reply that the selection grade has been given to the petitioner by order dated 6.6.80 w.e.f 1.7.82. It is further stated that the first prayer of the petitioner was partly satisfied. With regard to second prayer of the petitioners i.e to quash and set aside the seniority list dated 15.10.84, it is stated that the said seniority list was provisional seniority list . There is no seniority list dated 15.10.84 but there was a provisional seniority list dated 9.10.84. After issuance of provisional seniority list, objections have been called for against the final seniority list, but the present petitioners did not raise any objections against

the provisional seniority list which was published on 9.10.84. Thereafter, a final seniority list has been published on 2.3.85. Hence, if the petitioners want to challenge the said seniority list they have to file separate petition for the same.

4. The grievance of the present petitioners is that selection grade should be granted to them w.e.f 1.7.79. For granting selection grade there was one government resolution which has been published by the Roads & Building Department dated 14.12.84. In this Government Resolution dated 14.12.84, it has been stated that the selection grade can be granted to the 20% of the establishment. There are 126 temporary clerks in the establishment and as per the 20% the selection grade can be granted to the 25 person/employees and pursuant to that by order dated 15.4.85 selection grade had been given to the employees w.e.f 1.7.79. As per the seniority list dated 2.3.85 the names of the present petitioners were shown after serial number 26, hence, they were not entitled for the selection

grade on 15.4.85 as per the final seniority list dated 2.3.85. Hence, the petitioners were not entitled for the selection grade on 15.4.85 w.e.f 1.7.79.

5.It is furhter stated that out of these nine petitioners the selection grade has been given to four persons i.e (1) Mr. P.M Dave (2) Mr. B.B Shah (3) Mr. P. M Chaudhari and (4) Mr. J.D Prajapati .The selection grade has been given to Mr. P M Dave & Mr. B.B Shah vide order dated 6.6.88 w.e.f 1.7.82 and the selection grade has been given to Mr. P.M Chaudhari and Mr.J.D Prajapati vide order dated 25.5.89 w.e.f. 1.7.82. It is further stated that remaining three petitioners have expired and remaining all other employees were retired from service. It is stated that though the petitioners were senior on work charged establishment at Divisional Level they were not taken up on temporary establishment as they were not fulfilling the required criteria fixed by the Government i.e required qualification, age limit, source of recruitment etc and they were taken up as temporary

establishment when Government has relaxed the rules after 1977 to 1980.

6. After having gone through the facts stated and the averments made in the petition as well as the affidavit in reply and after having heard the Learned AGP appearing for the respondents,the Court is of the opinion that the grievance raised by the petitioners in the present petition has been partly satisfied. In view of the contentions raised in the affidavit in reply, remaining prayers made in the petition cannot be granted as the same were neither disputed nor controverted. Even otherwise, after more than 18 years , the Court is not inclined to upset the seniority list which has already been finalised and effect was also given to, more particularly when all the petitioners have retired and some of them have expired.

7. In the above view of the matter, the petition is accordingly dismissed. Notice discharged without any order as to costs.

(K.A.PUJ, J)